

Senate File 421 - Introduced

SENATE FILE 421

BY EDLER

A BILL FOR

1 An Act providing for the reinstatement of parental rights of a
2 former parent under certain circumstances.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 232.121 Reinstatement of parental
2 rights.

3 1. A child, the child's guardian ad litem, the department,
4 or an agency or person to whom guardianship and custody of the
5 child has been transferred following termination of parental
6 rights of a parent under section 232.117, may petition the
7 juvenile court to reinstate the parental rights of the child's
8 former parent if all of the following circumstances exist,
9 making the child an eligible child for purposes of this
10 section:

11 a. The child was previously found to be a child in need of
12 assistance under this chapter.

13 b. The child's former parent's parental rights were
14 terminated in a proceeding under this chapter.

15 c. The child has not been adopted and the child has not
16 achieved the goals of the child's case permanency plan.

17 d. At least two years have passed since the final order of
18 termination of parental rights was entered.

19 e. The child is at least twelve years old at the time the
20 petition is filed. However, upon the child's motion for good
21 cause shown, or on the court's own motion, the court may hear a
22 petition filed on behalf of a child younger than twelve years
23 old.

24 2. a. If a child meets the criteria of an eligible
25 child under subsection 1, the child's guardian ad litem,
26 the department, or an agency or person to whom guardianship
27 and custody of the child has been transferred under section
28 232.117, shall notify the child of the child's right to
29 petition the court for the reinstatement.

30 b. If the former parent whose rights were previously
31 terminated contacts the child's guardian ad litem, the
32 department, or the agency or other person to whom guardianship
33 and custody of the child has been transferred under section
34 232.117, and the child is eligible pursuant to subsection 1,
35 the guardian ad litem, department, agency, or other person

1 shall notify the eligible child of the child's right to
2 petition the court for the reinstatement.

3 3. If a child seeking to petition for reinstatement of
4 parental rights under this section does not have a guardian
5 ad litem or attorney, the court shall appoint a guardian ad
6 litem and counsel for the child at no cost to the child. If a
7 guardian ad litem has previously been appointed for the child
8 in a proceeding under this chapter, the same person may serve
9 both as the child's counsel and as guardian ad litem. However,
10 the court may appoint a separate guardian ad litem if the same
11 person cannot properly represent the legal interests of the
12 child as legal counsel and also represent the best interest of
13 the child as guardian ad litem.

14 4. The petition must be signed by the child unless good
15 cause is shown as to why the child is unable to do so. The
16 former parent for whom reinstatement of parental rights is
17 sought must consent in writing to the petition.

18 5. If, after a threshold hearing to consider the parent's
19 apparent fitness and interest in the reinstatement of parental
20 rights, the court finds by a preponderance of the evidence
21 that the best interest of the child may be served by the
22 reinstatement of parental rights, the court shall order that a
23 hearing on the merits of the petition be held.

24 6. Before a hearing is held on the merits of the petition,
25 notice shall be provided to the child's guardian ad litem, the
26 department, the agency or other person to whom guardianship
27 and custody of the child has been transferred under section
28 232.117, the child's attorney, the child, the child's former
29 parent whose parental rights are the subject of the petition,
30 any parent whose rights have not been terminated, the child's
31 current foster parent, the child's relative caregiver, and the
32 child's tribe, if applicable. Notice shall be provided in the
33 same manner as in section 232.37.

34 7. The court shall conditionally grant the petition if the
35 court finds by clear and convincing evidence that the child has

1 not been adopted, has not achieved the goals of the child's
2 case permanency plan, and is not imminently likely to achieve
3 such goals, and that reinstatement of parental rights is in the
4 child's best interest. In determining whether reinstatement is
5 in the child's best interest the court shall consider, but is
6 not limited to considering, all of the following:

7 *a.* Whether the former parent whose rights are to be
8 reinstated is a fit parent and has remedied the parent's
9 deficits as provided in the record of the prior termination
10 proceedings and prior termination order.

11 *b.* Whether the former parent whose rights are to be
12 reinstated understands the legal obligations, rights, and
13 consequences of the reinstatement of parental rights and is
14 willing and able to accept such obligations, rights, and
15 consequences.

16 *c.* The age and maturity of the child, and the ability of the
17 child to express the child's preference.

18 *d.* Whether the reinstatement of parental rights will present
19 a risk to the child's health, welfare, or safety.

20 *e.* Other material changes in circumstances, if any, that may
21 have occurred which warrant the granting of the petition.

22 8. In determining whether the child has or has not achieved
23 the goals of the child's case permanency plan or whether the
24 child is imminently likely to achieve the goals of the child's
25 case permanency plan, the department, or the agency or other
26 person to whom guardianship and custody of the child has been
27 transferred under section 232.117, shall provide the court, and
28 the court shall review, information related to any efforts to
29 achieve the goals of the case permanency plan including efforts
30 to achieve adoption or a permanent placement.

31 9. *a.* If the court conditionally grants the petition under
32 subsection 7, the case shall be continued for six months and a
33 temporary order of reinstatement entered. During this period,
34 the child shall be placed in the custody of the former parent.
35 The department or agency shall develop a case permanency plan

1 for the child reflecting reunification and shall provide
2 transition services to the family, as appropriate.

3 *b.* If the child must be removed from the former parent due
4 to allegations of abuse or neglect prior to the expiration
5 of the conditional six-month period, the court shall dismiss
6 the petition for reinstatement of parental rights if the court
7 finds the allegations have been proven by a preponderance of
8 the evidence.

9 10. At the end of the six-month period, the court shall hold
10 a hearing and order one of the following:

11 *a.* If the placement with the former parent has been
12 successful, the court shall enter a final order of
13 reinstatement of parental rights, which shall restore all
14 rights, powers, privileges, immunities, duties, and obligations
15 of the parent as to the child, including those relating
16 to custody, control, and support of the child. The court
17 shall vacate the dispositional order in the child in need
18 of assistance proceeding and direct the clerk's office to
19 provide a certified copy of the final order of reinstatement of
20 parental rights to the parent at no cost.

21 *b.* If the placement with the former parent has not been
22 successful, the court shall dismiss the petition and the
23 child's case permanency plan shall remain in effect.

24 11. A proceeding to reinstate parental rights is a separate
25 action from the termination of parental rights proceeding
26 and does not vacate or otherwise affect the validity of the
27 original termination of parental rights order. An order
28 granted under this section reinstates the former parent's
29 rights to the child. The reinstatement is a recognition that
30 the situation of the parent and child has changed since the
31 time of the termination of parental rights and reunification
32 is now appropriate.

33 12. A parent whose rights are reinstated under this
34 section shall not be liable for any child support owed to the
35 department or costs of other services provided to a child for

1 the time period from the date of termination of parental rights
2 to the date parental rights are reinstated.

3 13. This section shall apply to any eligible child who is
4 under the jurisdiction of the juvenile court at the time of the
5 hearing regardless of the date parental rights were terminated.

6 14. The state, the department, or an agency or other person
7 or an employee of such entities is not liable for civil damages
8 resulting from any act or omission in the provision of services
9 under this section unless the act or omission constitutes gross
10 negligence. This section does not create any duty and shall
11 not be construed to create a duty where none exists. This
12 section does not create a cause of action against the state,
13 the department, an agency, another person, or the employees of
14 such entities concerning the original termination.

15 EXPLANATION

16 The inclusion of this explanation does not constitute agreement with
17 the explanation's substance by the members of the general assembly.

18 This bill provides for the reinstatement of parental rights
19 following the granting of a termination of parental rights
20 order, under certain circumstances. The bill provides that
21 a child, the child's guardian ad litem (GAL), the department
22 of human services (DHS), or an agency or person to whom
23 guardianship and custody of the child has been transferred
24 following termination of the parental rights of a parent, may
25 petition the juvenile court (court) to reinstate the previously
26 terminated parental rights of the child's former parent
27 if certain circumstances exist, making the child eligible
28 to petition the court. The circumstances that must exist
29 are: the child was previously found to be a child in need
30 of assistance; the child's former parent's parental rights
31 were terminated in a proceeding under the juvenile justice
32 chapter (Code chapter 232); the child has not been adopted
33 and the child has not achieved the goals of the child's case
34 permanency plan; two years have passed since the final order of
35 termination of parental rights was entered; and the child is at

1 least 12 years old at the time the petition is filed. However,
2 upon the child's motion for good cause shown, or on the court's
3 own motion, the court may hear a petition filed by a child
4 younger than 12 years of age.

5 If a child meets the criteria of an eligible child, the
6 child's GAL, DHS, or an agency or person to whom guardianship
7 and custody of the child has been transferred, is required to
8 notify the child of the child's right to petition the court for
9 the reinstatement. Additionally, if the former parent whose
10 rights have been previously terminated contacts the child's
11 GAL, DHS, or the agency or other person, and the child meets
12 the criteria of an eligible child, the GAL, DHS, or the agency
13 or other person is required to notify the eligible child of the
14 child's right to petition the court for the reinstatement.

15 The bill provides for the appointment of a GAL and attorney
16 for the child if the child does not already have a GAL and
17 attorney, at no cost to the child.

18 The petition must be signed by the child, unless good cause
19 is shown as to why the child is unable to do so. The former
20 parent for whom reinstatement of parental rights is sought must
21 consent in writing to the petition.

22 After a threshold hearing to consider the former parent's
23 apparent fitness and interest in reinstatement of parental
24 rights, if the court finds by a preponderance of the evidence
25 that the best interest of the child may be served by the
26 reinstatement of parental rights, the court shall order that
27 a hearing on the merits of the petition be held. The bill
28 provides for notice to certain parties prior to the hearing
29 on the merits of the petition. Following the hearing on the
30 merits of the petition, the court shall conditionally grant the
31 petition if the court finds by clear and convincing evidence
32 that the child has not been adopted, has not achieved the goals
33 of the child's case permanency plan, and is not imminently
34 likely to achieve such goals, and that the reinstatement
35 of parental rights is in the child's best interest. The

1 bill specifies considerations for the court in determining
2 whether reinstatement is in the child's best interest and in
3 determining whether the child has or has not achieved the goals
4 of the child's case permanency plan or is imminently likely
5 to achieve such goals. If the court conditionally grants the
6 petition, the case is continued for six months and a temporary
7 order of reinstatement is entered. During the six-month
8 period, the child is placed in the custody of the former parent
9 and DHS or an agency shall develop a case permanency plan for
10 the child reflecting reunification and provide transition
11 services to the family, as appropriate. If, during the
12 six-month period, the child must be removed from the former
13 parent due to allegations of abuse or neglect, the court shall
14 dismiss the petition for reinstatement of parental rights if
15 the allegations are proven by a preponderance of the evidence.

16 At the end of the six-month period, the court is required
17 to hold a hearing and make certain determinations and
18 dispositions. If the placement with the former parent has
19 been successful, the court shall enter a final order of
20 reinstatement of parental rights, which shall restore all
21 rights, powers, privileges, immunities, duties, and obligations
22 of the parent as to the child, including those relating to
23 custody, control, and support of the child. Additionally, the
24 court shall vacate the dispositional order in the child in
25 need of assistance proceeding and direct the clerk's office to
26 provide a certified copy of the final order of reinstatement
27 of parental rights to the parent at no cost. If the placement
28 with the former parent has not been successful, the court shall
29 dismiss the petition and the child's case permanency plan shall
30 remain in effect.

31 The bill provides that a proceeding to reinstate parental
32 rights is a separate action from the termination of parental
33 rights proceeding and does not vacate or otherwise affect the
34 validity of the original termination of parental rights order.
35 A reinstatement order reinstates the former parent's parental

1 rights to the child. The reinstatement is a recognition that
2 the situation of the parent and child has changed since the
3 time of the termination of parental rights and reunification is
4 now appropriate. A parent whose rights are reinstated is not
5 liable for any child support owed to the department or costs of
6 other services provided to a child during the time period from
7 the date of termination of parental rights to the date parental
8 rights are reinstated. The bill applies to any eligible child
9 who is under the jurisdiction of the juvenile court at the time
10 of the hearing regardless of the date parental rights were
11 terminated. The bill provides that the state, the department,
12 an agency, or other person or an employee of such entities
13 is not liable for civil damages resulting from any act or
14 omission in the provision of services under the bill, unless
15 the act or omission constitutes gross negligence. The bill
16 does not create any duty and shall not be construed to create a
17 duty where none exists, and does not create a cause of action
18 against the state, the department, an agency, another person,
19 or the employees of such entities concerning the original
20 termination.